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OFFICE OF PETITIONS

In re Application of :
Barzaghi et al. : DECISION ON PETITION TO
Application Number: 10/006583 : WITHDRAW HOLDING OF
Filing Date: 12/10/2001 : ABANDONMENT
Attorney Docket Number: Q67651 :
:

This is a decision on the "PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT UNDER MPEP SECTION 711.03(c)(I)," filed on March 20, 2008.

A Notice of Abandonment was mailed on February 29, 2008, stating that the application was abandoned for failure to timely file a proper reply to the final Office action mailed on April 2, 2007.¹ On October 2, 2007, a three (3) month extension of time was filed, accompanied by an amendment after final rejection and a Notice of Appeal.

On October 30, 2007, an Advisory Action Before the Filing of an Appeal Brief was mailed, stating that the reply filed on October 2, 2007, fails to place this application in condition for allowance. The aforementioned Notice of Abandonment was subsequently mailed.

Petitioners aver that the Office issued the Notice of Abandonment in error because applicant filed a timely and proper reply to the final Office action of April 2, 2007. Specifically, petitioners assert that they timely filed a Notice of Appeal and a three (3) month extension of time on October 2, 2007.

A review of the record reveals that a Notice of Appeal and three (3) month extension of time filed on October 2, 2007, are located therein.

Accordingly, petitioners have established that they submitted a timely reply to the final Office action in the form of a Notice

¹ The final Office action was originally mailed on April 3, 2006, but was remailed, with a new period for reply set, in accordance with the decision granting petition to reset period for reply mailed on January 29, 2007.

of Appeal and a three (3)-month extension of time on October 2, 2007. Therefore, the Office reminds applicant that the two (2)-month extendable period to file an appeal brief in compliance with 37 CFR 41.37, accompanied by the fee required by law, began to run on October 2, 2007, the date of filing the Notice of Appeal. The Office notes that "37 CFR 41.37(a) does not permit the brief to be filed within the time allowed for reply to the action from which the appeal was taken even if such time is later." MPEP 1205. "Once appellant timely files a notice of appeal in compliance with 37 CFR 41.31, the time period for reply set forth in the last Office action is tolled and is no longer relevant for the time period for filing an appeal brief." Id. Therefore, applicant is required to submit an appeal brief on or before May 2, 2008, accompanied by a request for an extension of time for response within the fifth month and fee to avoid abandonment of this application. In other words, applicant, himself, started the running of the two-month extendable period to file an appeal brief based upon the date applicant originally submitted the Notice of Appeal with the USPTO.

The petition is granted to the extent indicate above.

The holding of abandonment is withdrawn and the application is restored to pending status.

This matter is being referred to Technology Center Art Unit 2111 to await the filing of an appeal brief within the period noted above.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



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